

ORDINANCE NO. 09-63

**AN ORDINANCE AMENDING TITLE 3 OF THE CARPENTERSVILLE MUNICIPAL
CODE IN REGARD TO A MUNICIPAL GAS USE TAX**

WHEREAS, the Village of Carpentersville is a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, pursuant to said Section, the Village of Carpentersville, a home rule unit, may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, in furtherance of its home rule powers, it is necessary and desirable for the Village of Carpentersville to amend its ordinances regarding taxation by creating a municipal gas use tax;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Carpentersville, Kane County, Illinois, as follows:

SECTION 1:

The Carpentersville Municipal Code, Title 3, "Revenue and Finance" is hereby amended by adding a new Chapter 3.18, entitled "Municipal Gas Use Tax" which shall read in its entirety as follows:

**CHAPTER 3.18
MUNICIPAL GAS USE TAX**

3.18.010 TITLE:

The tax imposed by this Chapter shall be known as the "Municipal Gas Use Tax" and is imposed in addition to all other taxes imposed by the Village of Carpentersville, the State of Illinois, or any other municipal corporation or political subdivision thereof.

3.18.020 DEFINITIONS:

For the purpose of this Chapter, the following definitions shall apply:

A. **Person** means any individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, municipal corporation or political subdivision of this state, or a receiver, trustee, conservator or other representative appointed by order of any court.

B. **Public Utility** means a public utility as defined in section 3-105 of the Public Utilities Act (220 ILCS 5/3-105).

C. **Public Utilities Act** means the Public Utilities Act, as amended, (220 ILCS 5/1-101 et seq.)

D. **Retail Purchaser** means any person who purchases gas in a Sale at Retail

E. **Sale at Retail** means any sale of gas by a retailer to a person for use or consumption, and not for resale. For this purpose, the term **retailer** means any person engaged in the business of distribution, supplying, furnishing or selling gas.

F. **Village** means the Village of Carpentersville.

3.18.030 TAX IMPOSED:

A. Except as otherwise provided by this Chapter, a tax is imposed on the privilege of using or consuming gas in the Village that is purchased in a Sale at Retail at the rate of 4.5 cents per therm.

B. The ultimate incidence of and liability for payment of the tax is on the Retail Purchaser, and nothing in this Chapter shall be construed to impose a tax on the occupation of distributing, supplying, furnishing, selling or transporting gas.

C. The Retail Purchaser shall pay the tax, measured by therms of gas delivered to the Retail Purchaser's premises, to the Public Utility delivering the gas to the Retail Purchaser and designated to collect the tax pursuant to Section 3.18.040 below, before the payment due date of the Public Utility's bill first reflecting the tax, or directly to the Village's Finance Director on or before the last day of the month following the month in which the gas is delivered to the Retail Purchaser if no Public Utility has been designated to collect the tax pursuant to said Section 3.18.040 or if the gas is delivered by a person other than a Public Utility so designated.

D. Nothing in this Chapter shall be construed to impose a tax upon any person, business or activity which, under the Constitution of the United States or the Constitution of the State of Illinois, may not be made the subject of taxation by the Village.

E. To prevent multiple taxation, the use of gas in the Village by a Retail Purchaser shall be exempt from the tax imposed by this Chapter if the gross receipts from the Sale at Retail of such gas to the Retail Purchaser are property subject to a tax imposed upon the seller of such gas pursuant to the Village's municipal utility tax, as amended from time to time (Title 3, Chapter 22 of this Code) authorized pursuant to Section 8-11-2 of the Illinois Municipal Code (65 ILCS 5/8-11-2).

F. A person who purchases gas for resale and therefore does not pay the tax imposed by this Chapter with respect to the use or consumption of gas, but who later uses or consumes part or all of the gas, shall pay the tax directly to the Village's Director of Finance on or before the last day of the month following the month in which the gas is used or consumed.

G. The tax shall apply to gas delivered to the Retail Purchaser on or after January 1, 2010.

H. If it shall appear that an amount of tax has been paid which was not due under the provisions of this Chapter, whether as a result of a mistake of fact or an error of law, then such amount shall be (1) credited against any tax due, or to become due, under this Chapter from the person who made the erroneous payment; or (2) subject to a refund if no such tax is due or to become due, provided that no amounts erroneously paid more than three (3) years prior to the filing of a claim therefore shall be so credited or refunded.

I. No action to recover any amount of the tax due under the provisions of this Chapter shall be commenced more than three (3) years after the due date of such tax amount.

3.18.040 COLLECTION OF TAX:

A. The Director of Finance is authorized to enter into a contract for collection of the tax imposed by this Chapter with any Public Utility providing gas service in the Village. The contract shall include and substantially conform with the following provisions:

1. The Public Utility will collect the tax with respect to gas delivered by it to its customers as an independent contractor;
2. The Public Utility will remit collected taxes to the Village's Director of Finance no more often than once each month;
3. The Public Utility will be entitled to withhold from tax collections a service fee not to exceed three (3%) per cent of the amounts collected and timely remitted to the Village's Director of Finance;
4. The Public Utility shall not be liable to the Village for any tax not actually collected from a Retail Purchaser; and
5. Such additional terms as the parties may agree upon.

B. A Public Utility designated to collect the tax imposed by this Chapter from its customers shall bill each customer for the tax on all gas delivered to the customer unless:

1. the customer's use or consumption is exempt from the tax pursuant to a duly passed and authorized ordinance of the Village; or
2. the Public Utility has received written notification from the Village that the customer is exempt from the tax.

3.18.050 BOOKS AND RECORDS:

Every taxpayer shall keep accurate books and records, including original source documents and books of entry, denoting the activities or transactions that gave rise, or may have given rise, to any tax liability or exemption under this Chapter. All such books and records shall, at all times during business hours, be subject to and available for inspection by the Village.

SECTION 2:

This Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

SECTION 3:

All ordinances or parts of ordinances thereof in conflict with this Ordinance are hereby repealed to the extent of any such conflict.

SECTION 4:

Any Section or provision of this Ordinance that is construed to be invalid or void shall not affect the remaining Sections or provisions which shall remain in full force and effect thereafter.

Motion made by Trustee Teeter, seconded by Trustee Sigwalt, that the Ordinance be adopted.

ADOPTED BY THE PRESIDENT AND BOARD OF TRUSTEES of the Village of Carpentersville, Kane County, Illinois, this 17th day of November, 2009, pursuant to a roll call vote as follows:

AYES: 6 (Schultz, Humpfer, Sigwalt, Hinz, Teeter, McFeggan)

NAYS: 0

ABSENT: 0

APPROVED by me this 17th day of November, 2009.



Village President

(SEAL)

ATTEST:



Village Clerk